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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,459	10/12/2000	Arthur M. Tofani, Jr.	E-1902	7967

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EXAMINER
GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/689,459	TOFANI, JR. ET AL.
	Examiner	Art Unit
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 February 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-25,27-29 and 49-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-25,27-29 and 49-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22, 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 5,555,673).

As to Claim 22, Smith discloses a method of eliminating unwanted vegetative growth with a herbicide (col. 4 lines 10-46; abstract) or controlling crawling pests such as insects when a pesticide is used (col. 4 lines 10-46; abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (col. 4 line 24; 28 of Fig. 2); selectively delivering the compound to an applicator by increasing internal pressure (pressure of reservoir is increased because valve assembly 30 is forced into the reservoir thereby reducing the volume of the reservoir and increasing its internal pressure) of the reservoir and forcing through a regulatable valve (col. 4 lines 30-33; 30 of Figs. 5 and 6 showing compound being forced through regulatable valve); directly contacting a surface with the applicator (col. 4 lines 25-29; col. 8 lines 16-18); regulating the flow of the compound delivered by the applicator by varying the internal pressure or the regulatable valve (col. 4 lines 30-33; col. 6 lines 22-33); wherein the step of directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18), and wherein the step of

directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18).

As to Claim 49, Smith discloses a method of eliminating unwanted vegetative growth with a herbicide (col. 4 lines 10-46; abstract) or controlling crawling pests such as insects when a pesticide is used (col. 4 lines 10-46; abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (col. 4 line 24; 28 of Fig. 2); selectively delivering the compound to an applicator by decreasing the volume of the reservoir (as shown in Figs. 5 and 6 valve assembly 30 is forced into the reservoir thereby reducing the volume of the reservoir and increasing its internal pressure) and forcing through a regulatable valve (col. 4 lines 30-33; 30 of Figs. 5 and 6 showing compound being forced through regulatable valve); directly contacting a surface with the applicator (col. 4 lines 25-29; col. 8 lines 16-18); regulating the flow of the compound delivered by the applicator by varying the internal pressure or the position of the regulatable valve (col. 4 lines 30-33; col. 6 lines 22-33); wherein the step of directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18), and wherein the step of directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18).

As to Claim 50, Smith discloses a method of eliminating unwanted vegetative growth with a herbicide (col. 4 lines 10-46; abstract) or controlling crawling pests such as insects when a pesticide is used (col. 4 lines 10-46; abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (col. 4 line 24; 28 of Fig. 2);

selectively delivering the compound to an applicator (108 of Fig. 2) through a regulatable valve (30 of Figs. 2, 3, 5, and 6; col. 4 lines 30-33); directly contacting a surface with the applicator (col. 4 lines 25-29; col. 8 lines 16-18); regulating the flow of the compound delivered by the applicator by varying either the internal pressure or the position of the regulatable valve (col. 4 lines 30-33; col. 6 lines 22-33); wherein the step of directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18), and wherein the step of directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18).

As to Claim 51, Smith discloses a method of eliminating unwanted vegetative growth with a herbicide (col. 4 lines 10-46; abstract) or controlling crawling pests such as insects when a pesticide is used (col. 4 lines 10-46; abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (col. 4 line 24; 28 of Fig. 2); selectively delivering the compound to an applicator (108 of Fig. 2) through a regulatable valve (30 of Figs. 2, 3, 5, and 6; col. 4 lines 30-33); directly contacting a surface with the applicator (col. 4 lines 25-29; col. 8 lines 16-18); regulating the flow of the compound delivered by the applicator by varying the volume of the reservoir (as shown in Figs. 5 and 6 that when the valve is open the valve assembly 30 is forced into the reservoir thereby reducing the volume of the reservoir and increasing its internal pressure) wherein the step of directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18), and wherein the step of directly contacting a surface comprises

contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18).

As to Claim 52, Smith discloses a method of eliminating unwanted vegetative growth with a herbicide (col. 4 lines 10-46; abstract) or controlling crawling pests such as insects when a pesticide is used (col. 4 lines 10-46; abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (col. 4 line 24; 28 of Fig. 2); selectively delivering the compound to an applicator by increasing internal pressure (pressure of reservoir is increased because valve assembly 30 is forced into the reservoir thereby reducing the volume of the reservoir and increasing its internal pressure) of the reservoir and forcing through a regulatable valve (col. 4 lines 30-33; 30 of Figs. 5 and 6 showing compound being forced through regulatable valve); directly contacting a surface with the applicator (col. 4 lines 25-29; col. 8 lines 16-18); regulating the flow of the compound delivered by the applicator by varying at least one of the internal pressure or the regulatable valve (col. 4 lines 30-33; col. 6 lines 22-33); and providing a valve (30 and 68 of Fig. 6) and regulating the valve (30 and 68 of Figs. 5 and 6) to maintain an open channel of communication (arrows in Fig. 6) between the reservoir and the applicator to permit a controllable flow from the applicator to the reservoir, wherein the step of directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18), and wherein the step of directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 4 lines 35-40; abstract; col. 8 lines 16-18).

Claims 53 is rejected under 35 U.S.C. 102(b) as being anticipated by Yelf (US 4,471,889).

As to Claim 53, Yelf discloses a method of eliminating unwanted vegetative growth with a herbicide (abstract) or controlling crawling pests such as insects when a pesticide is used ("the like" of the abstract) comprising the steps of providing a compound comprising either a herbicide or pesticide compound in a reservoir (11 of Figs. 1,3, and 4); selectively delivering the compound to an applicator (col. 3 lines 53-68 and col. 4 lines 1-12; 11 and 13 of Fig. 4); directly contacting a surface with the applicator (col. 1 lines 46-53); regulating the flow of the compound delivered by the applicator by varying at least one of the internal pressure (col. 4 line 3) of the reservoir and the position of the regulatable valve (col. 3 lines 53-68 and col. 4 lines 1-12); wherein the step of regulating with a valve includes applying a force (through spring 33 of Fig. 4) to move a value element (14 of Fig. 4) from a first position to a second position (from closed "open position" of col. 4 lines 43-44) which permits flow communication from said reservoir to the applicator (col. 3 lines 53-68 and col. 4 lines 1-12), and releasing the force being applied to allow the valve element to be maintained in the second position (inherent in "the operating arm is closed" of col. 4 line 50 in that an outside force must act of 14), wherein directly contacting a surface comprises contacting unwanted vegetation when a herbicide is in the reservoir (col. 1 lines 55-61), and wherein the step of directly contacting a surface comprises contacting a surface which crawling pests such as insects can cross when a pesticide is in the reservoir (col. 1 lines 55-61).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,555,673).

As to Claim 23, the limitations of Claim 22 are disclosed as described above. Not disclosed is the use of oil-based herbicides. Examiner takes official notice that it is old and notoriously well known in the pesticides art to use oil base herbicides in herbicide applicators are use. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Smith by using the apparatus with oil-based herbicides so as to apply the desired and most effective herbicide.

Claims 24, 25, 27, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,555,673) in view of Ostrowsky (US 3,993,208).

As to Claim 24, the limitations of Claim 22 are disclosed as described above. Not disclosed is a safety cover means with securing means of rotating the cover means past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Smith by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

As to Claim 25, Smith as modified by Ostrowsky further disclose application of a positive force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

As to Claim 27, Smith as modified by Ostrowsky further disclose a step of removing from the applicator an overcap which selectively covers the applicator (inherent in Fig. 1of Ostrowsky).

As to Claim 28, the limitations of Claim 22 are disclosed as described above. Not disclosed are a safety cover means that fits on the reservoir and is rotatable past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) that fits on a reservoir (10 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Smith by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

As to Claim 29, Smith as modified by Ostrowsky further disclose application of a force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

Response to Arguments

Applicant's arguments filed 24 February 2003 have been fully considered but they are not persuasive. Applicant's arguments are *(1)* Applicant's invention allows for regulation of the flow of the compound from the reservoir while applying the compound while Smith discloses a

device with a non-continuous delivery to a sponge which must be saturated before application (Remarks page 7 lines 23-29 and page 8 lines 1-3); *(2)* Smith's device appears to need two hands to operate while Applicant's invention needs only one hand to operate (Remarks page 8 1st full para.); *(3)* Smith's device must be pressed against a surface for release while Applicant's invention does not (Remarks page 8 2nd complete para.); and *(4)* Smith's device lacks a safety device (remarks page 10 1st complete para.).

As to argument *(1)*, Smith at col. 4 lines 30-36 discloses a method of applying a liquid to a surface when applying a pressure to a container which make a liquid pass through a valve onto a dispensing assembly and onto an object. This would be continuous flow while applying the liquid. By changing the amount of pressure applied to the container one could regulate the flow rate while applying the liquid.

As to argument *(2)*, Examiner considers Smith's device capable of operation with one hand. In addition, the language of Applicant's claims does not claim a one-handed dispenser.

As to argument *(3)*, Examiner considers Smith's device to be capable of dispensing liquid either while pressed against an object or not pressed against an object because the pressure could be applied to the container of Smith at any time or locations. The pressure on the container would cause the valve to open and liquid to flow to the sponge and beyond.

As to argument *(4)*, Ostrowsky discloses a safety cover means. The combination Smith with Ostrowsky is proper because the devices in both references deal with liquid dispensers.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Palmer et al., Denarest, Nylen, and Kaufmann discloses in the prior art dispensers with valves and pressured reservoirs.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jeffrey L. Gellner

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